Sugar Refining Co., 121 N. Y. 582, 18 Am. St. Rep. 843, 32 Amer. & Eng. Corp. Cas. 149, 24 N. E. Rep. 834, suggested what seems to be a safe rule for the guidance of the courts, when he said: "What the state may bear is one thing, what it should cause and create is quite another."

CORPORATIONS—REPURCHASE OF STOCK.—A solvent mercantile corporation borrowed money from complainant bank. Unknown to the bank, the money was used to repurchase the shares of twenty-six dissatisfied stockholders. Later the company became insolvent, whereupon the bank brought suit against the twenty-six stockholders. *Held,* upon demurrer to the bill for multifariousness and misjoinder of parties, that the stockholders were properly joined as parties defendant, and bound as such to account for the money as trustees. *First National Bank of Laurel* v. *Pearson et al.* (Miss. 1915), 68 So. 921.

The weight of authority in the United States is to the effect that a corporation may, when no creditors' rights intervene and no statute expressly or impliedly restrains it, purchase its own stock. *Vent* v. *Duluth Coffee & Spice Co.*, 64 Minn. 307; *Clapp et al.* v. *Peterson,* 104 Ill. 26; *Farmers & Mechanics Bank* v. *Champlain Transportation Co.*, 18 Vt. 131; *Iowa Lumber Co.* v. *Foster,* 49 Iowa 25. A few courts hold that such a purchase, not being necessarily incident to the carrying on of the corporate business, is ultra vires. *Coppin* v. *Greenlecs & Ransom Co.*, 38 Oh. St. 275; *Currier* v. *Lebanon Slate Co.*, 56 N. H. 262; *Salem Mill Dam Corporation* v. *Ropes,* 6 Pick. (Mass.) 23. A third class of decisions, based, to all intents and purposes, upon the doctrine of ultra vires, sanctions such a purchase, when, and only when, the corporation so purchasing is expressly authorized to do so by statute or charter. *Hope* v. *International Financial Society,* 35 L. T. (Eng.) 623; *Ables* v. *Cockran, 22* Kan. 405; *Barton* v. *Port Jackson,* 17 Barb. (N. Y.) 397; 7 ENG. & AMER. ENCY. OF LAW, 818. In every jurisdiction the rights of corporate creditors and minority shareholders are jealously guarded; but the courts do not, in their endeavor to shield them from injury, lose sight of the fact that innocent third parties are entitled to an equal amount of consideration. Stockholders who sold their shares when the corporation was financially sound are protected by the application of familiar equitable principles to the facts of each case. Only those stockholders who dispose of their shares at a time when the corporation is actually insolvent, or on the verge of insolvency, are liable as trustees. The decision in the principal case is clearly in accord with this doctrine, the evidence disclosing that the corporation was only nicely started in business and that the twenty-six surrendered shares represented more than one-half of the capital stock of the company. See *Matter of the Fecheimer-Fishel Co.,* discussed in 14 COLUM. LAW REV. 451, for a contrary and anomalous decision.

DAMAGES—SPECULATIVE PROFITS LOST BY DELAY IN TRANSPORTATION.—In an action against a carrier for delay in transportation of plaintiff's carnival outfit and troupe, where the carrier had notice of the character of the goods and the purpose for which the troupe and outfit were being carried, *Held,*

evidence consisting of estimates as to the profits plaintiff would have earned, if the show had arrived in time, was insufficient as a basis of damages; loss of profits which are purely speculative, not being recoverable. *Central Railway of Georgia* v. *Weaver* (Ala. 1915), 69 So. 521.

The court, GARDNER, J., dissenting, applies in this case the rule quoted in *Dickerson* v. *Finley*, 158 Ala. 149, 48 So. 548, wherein it is said that those profits are considered too uncertain to permit of recovery for them in damages "which are purely speculative in their nature and depend upon so many incalculable contingencies as to make it impracticable to determine them definitely by any trustworthy mode of computation." While it is perhaps well established that profits answering this description could not be allowed without violating the rule of damages requiring certainty of proof, yet, as pointed out by GARDNER, J., in his able dissenting opinion, it may well be doubted whether these profits answer that description. It would seem that the profits to be expected here are little, if any, more speculative than future profits in a mercantile business, and certainly not less speculative than the profits to be derived from growing crops, damages for the destruction of which have been allowed by the Alabama court. *International Agr. Corp.* v. *Abercrombie*, 184 Ala. 244, 63 So. 549; *Bell* v. *Reynolds & Lee*, 78 Ala. 511, 56 Am. Rep. 52. But conceding that these profits are uncertain and speculative, the trend of modern authority is toward allowing recovery against carriers, where they have, as in the instant case, undertaken to deliver goods with the notice of the special purpose for which they are needed, the notice bringing the case within the second branch of the rule laid down in *Hadley* v. *Baxendale*, 6 Exch. 341, *i. e.*, allowing damages "such as may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as the probable result of the breach." See SEDGWICK, DAMAGES, 9th Ed., § 164. In a Massachusetts case arising on facts similar to those of the principal case, which case the court here noticed but disagreed with, recovery was allowed, the court saying: "The question is the ordinary damage from a delay in the transportation of that kind of freight. To get those ordinary damages, notice that the freight to be transported is that kind of freight, and that it is to be used at its destination, must be given to the carrier; and the damages recoverable are the ordinary earnings of the property in question." *Weston* v. *Boston & Maine R. R.*, 190 Mass. 298, 76 N. E. 1050. See note to this case in 5 Ann. Cas. 825. In line with this latter decision we have the following, allowing recovery for profits that might have been realized had they not been prevented by the carrier's delay in transporting the material or the equipment for the exhibition or performance:—*Yoakum* v. *Dunn*, 1 Tex. Civ. App. 524, 21 S. W. 411; *Kennedy* v. *Am. Exp. Co.*, 22 Ont. App. 278; *Foster* v. *Cleveland, C. C. & St. Louis Ry. Co.*, 56 Fed. 434; *Leach* v. *N. Y., N. H. & H. R. Co.*, 89 Hun 377, 35 N. Y. Supp. 305; *Illinois Cent. R. Co.* v. *Byrne*, 205 Ill. 9, 68 N. E. 720; *Delta Table & Chair Co.* v. *Yazoo & M. V. R. Co.*, 105 Miss. 861, 63 So. 272; *Simpson* v. *London R. Co.*, 1 Q. B. D. 274. It would, therefore, seem that the principal case is contrary to the trend of authority upon the point in question.